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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/500,078	11/26/2004	Roland Busses	BIG01 P498	5861
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EXAMINER

MICHENER, JOSHUA J

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 08/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/500,078	Applicant(s) BUSSES, ROLAND	
	Examiner Joshua J. Michener	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 June 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 20-79 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 29, 38, 39, 49, 58, 59, 69, 78, and 79 is/are rejected.
- 7) Claim(s) 21 - 28, 30 - 37, 41 - 48, 50 - 57, 61 - 68, 70 - 77 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/9/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 28 is objected to because of the following informalities: The phraseology defining the structural elements is relatively unclear. It appears if Applicant were to replace claim 28 with claim 48 this would alleviate the issue at hand while still encompassing the same scope. Appropriate correction is required.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 20, 40, and 60 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 20, 27, 40, 47, 60, and 67 of copending Application No. 10/500566 (‘566). Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 20, 40, and 60 broadly encompass the scope of claims 20, 27, 40, 47, 60, and 67 of copending ‘566.

Art Unit: 3644

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 29, 38, 39, 49, 58, 59, 69, 78, and 79 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 29, 49 and 69 recites the limitation "the gap area" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 38, 58 and 78 recites the limitation "the bridging elements" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 39, 59 and 79 are rejected as being dependent from a rejected base claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 20, 40 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Hostetler (US 3,388,690).**

Art Unit: 3644

8. For claims 20, 40, and 60, Hostetler discloses at least one feed delivery pipe ¹²(20) held above a floor of the coop and capable of being raised and lowered, the pipe having at least one aperture, comprising: a bowl device (10) configured to be suspended on the feed delivery pipe, the bowl device including a feed bowl (34) located beneath a downpipe, the bowl device further including a cupola (26) formed from grid bars in spoke fashion, wherein the downpipe comprises an inner cylinder (22) configured to depart from the aperture and an outer cylinder (36) encompassing the inner cylinder, on which the bowl is suspended by the grid bars (figure 4) of the bowl cupola in such a way that, when the feed delivery pipe is lowered, the bowl comes to rest on the floor of the coop, wherein the outer cylinder is guided in a rotatable manner as well as in a raisable and lowerable manner on the inner cylinder, and at least one lifting stop (75) is provided for delimiting a lifting and lowering path of the bowl; wherein the downpipe includes at least one rotational stop (72) delimiting a rotational path of the outer cylinder in relation to the inner cylinder.

9. **Claims 20, 29, 40, 49, 60, and 69 are rejected under 35 U.S.C. 102(b) as being anticipated by Cole et al. (US 5,092,274).**

10. For claims 20, 40, and 60, Cole discloses (see all figures) at least one feed delivery pipe held above a floor of the coop and capable of being raised and lowered, the pipe having at least one aperture, comprising: a bowl device (38) configured to be suspended on the feed delivery pipe, the bowl device including a feed bowl located beneath a downpipe, the bowl device further including a cupola (46) formed from grid bars in spoke fashion, wherein the downpipe comprises an inner cylinder (42) configured to depart from the aperture and an outer cylinder (56) encompassing the inner cylinder, on which the bowl is suspended by the grid bars of the bowl

Art Unit: 3644

cupola in such a way that, when the feed delivery pipe is lowered, the bowl comes to rest on the floor of the coop, wherein the outer cylinder is guided in a rotatable manner as well as in a raisable and lowerable manner on the inner cylinder, and at least one lifting stop (72) is provided for delimiting a lifting and lowering path of the bowl; wherein the downpipe includes at least one rotational stop (65, 68) delimiting a rotational path of the outer cylinder in relation to the inner cylinder.

11. For claims 29, 49 and 69, as best understood, Cole discloses the device according to claim 20, wherein: an end-side cylinder section of the inner cylinder covers a gap area between the outer cylinder (see for example figures 8 and 11).

Allowable Subject Matter

12. Claims 21 – 28, 30 – 37, 41 – 48, 50 – 57, 61 – 68, 70 – 77 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. Claims 38, 39, 58, 59, 78, and 79 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua J. Michener whose telephone number is 571-272-1467.

The examiner can normally be reached on Monday through Friday 7-4.


Art Unit: 3644

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Joshua J Michener
Examiner
Art Unit 3644

jjm

A handwritten signature in black ink, appearing to read 'Joshua J Michener', with a stylized flourish at the end.